

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/12/98

ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India the detention order dated 12.3.1998 (Annexure : A) passed by the Police Commissioner, Surat City under Section 3(2) of the Prevention of Anti-social Activities Act, 1985 (for short 'PASA') is under challenge. The prayer is to quash the aforesaid order through a writ of certiorary and to release the petitioner immediately by issuing a writ of habeas corpus.

2. Brief facts are that the detaining Authority, after considering three registered cases against the detenu under the Bombay Prohibition Act and further considering the statements of two confidential witnesses, arrived at subjective satisfaction that the petitioner is a bootlegger and his activities connected with his business of bootlegging were prejudicial for maintenance of public order. Accordingly the impugned order was passed.

3. This order is challenged by the learned Counsel for the petitioner only on two grounds.

The first ground is that two representations were made by the Advocate of the detenu to the State Government and none of these representations were decided by the State Government rather these representations were returned to the Advocate with objection that there was no signature or thumb impression of the detenu. No counter Affidavit has been filed to the amended writ petition where this ground was taken. It emerges from the record in possession of the learned A.G.P. that two representations were made by the Advocate of the petitioner. The first was dated 26.6.1998 which was received on 1.7.1998. Through this representation certain documents were demanded so as to enable the petitioner to make effective representation. This representation was returned on 4.7.1998 with the observation that there was no signature or thumb impression of the detenu. In this representation there was no prayer for revocation of detention order. On the other hand the prayer was to supply certain documents to enable the petitioner to make effective representation. This representation could be considered without raising technical objection. The State Government could have

taken decision that the documents applied for could not be supplied because the same were neither referred nor relied upon by the detaining Authority. With this observation the representation could have been rejected. The second course was to accept the representation and to furnish documents demanded by the petitioner so that he could make effective representation. In either case valuable right of the petitioner of making effective representation was taken away and thus there was patent infringement of Article 22(5) of the Constitution of India which has rendered the detention order illegal.

4. The second representation was sent by the Advocate of the detenu on 2.7.1998 which was again returned with similar communication dated 9.7.1998. This representation was received by the State Government on 6.7.1998. In this representation prayer for revocation of detention order was made. Since this representation was sent by the Advocate under instructions of the detenu it should not have been returned by the State Government rather it should have been dealt with on merit. Since this was not done the continued detention as well as detention is rendered illegal in view of pronouncement of the Apex Court in Balchand Chorasias v/s. Union of India, reported in A.I.R. 1978 SC 297. This is another ground for rendering the detention order illegal.

5. The next ground has been that the activities of the detenu do not amount to disturbance of public order. If the detention order can not be sustained for the first reason it is not necessary to discuss in detail the second contention. It can be observed that the registration of three cases under the Prohibition Act against the detenu could not be said to be activities prejudicial for maintenance of public order. In the grounds of detention brief account of the incidents on which these cases were registered has also been given and in this brief account there is no allegation that the detenu, at the time of search and seizure, created any obstruction or created situation prejudicial for maintenance of public order. From this incident the detenu can be said to be bootlegger inasmuch as he was carrying on business in foreign as well as country made liquor, but these incidents were hardly prejudicial for maintenance of public order.

6. The two statements of the two witnesses narrating the incidents dated 5.12.1997 at 7.00 p.m. and 10.1.1998 between 5.30 to 6.00 p.m. also cannot be said to be situation prejudicial for maintenance of public order. In these incidents even tempo of the life of the locality

or the community was not disturbed. If the witnesses were beaten and threat was shown to the persons who collected at the spot it cannot be said that these incidents had potential affect of disturbing even tempo of life of the society. Consequently the activities of the detenu cannot be said to be prejudicial for maintenance of public order.

7. For the reasons stated above, the detention order cannot be sustained. The writ petition, therefore, succeeds and is hereby allowed. The detention order dated 12.3.1998 (Annexure : A to the petition) is hereby quashed. The detenu Mohmad Akram Babu Ansari shall be released forth with unless wanted in some other case.

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(D. C. Srivastava, J.)

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